

1 THE HONORABLE MARSHA J. PECHMAN
2 THE HONORABLE JAMES L. ROBART
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 MICHAEL F. WENDT, Individually and On 14 Behalf of Others Similarly Situated, 15 Plaintiff, 16 v. 17 DENDREON CORPORATION, MITCHELL 18 H. GOLD, M.D., GREGORY T. 19 SCHIFFMAN and HANS E. BISHOP, 20 Defendants.	21 Case No.: 2:11-cv-01568 22 MOTION OF TEAMSTERS LOCAL 282 PENSION TRUST FUND FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL AND LIAISON COUNSEL 23 NOTE ON MOTION CALENDAR: 24 October 21, 2011
25 DAVID EMS, Individually and On 26 Behalf of Others Similarly Situated, 27 Plaintiff, 28 v. 29 DENDREON CORPORATION, MITCHELL 30 H. GOLD, M.D., GREGORY T. 31 SCHIFFMAN and HANS E. BISHOP, 32 Defendants.	33 Case No.: 2:11-cv-01294 34 MOTION OF TEAMSTERS LOCAL 282 PENSION TRUST FUND FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL AND LIAISON COUNSEL 35 NOTE ON MOTION CALENDAR: 36 October 21, 2011

1 AMIT FRIAS, Individually and On
 2 Behalf of Others Similarly Situated,

3 Plaintiff,

4 v.

5 DENDREON CORPORATION, MITCHELL
 6 H. GOLD, M.D., GREGORY T.
 SCHIFFMAN and HANS E. BISHOP,

7 Defendants.

8 Case No.: 2:11-cv-01291

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10 **MOTION OF TEAMSTERS LOCAL 282
 11 PENSION TRUST FUND FOR
 12 CONSOLIDATION, APPOINTMENT AS
 13 LEAD PLAINTIFF AND APPROVAL OF
 14 LEAD PLAINTIFF'S SELECTION OF
 15 LEAD COUNSEL AND LIAISON
 16 COUNSEL**

17 **NOTE ON MOTION CALENDAR:**

18 October 21, 2011

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20 Presently before the Court are three securities class actions brought on behalf of
 21 purchasers of the common stock of Dendreon Corporation ("Dendreon" or the "Company"),
 22 alleging violations of the Securities Exchange Act of 1934 (the "Exchange Act"), as amended by
 23 the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Pursuant to the Exchange Act,
 24 the Federal Rules of Civil Procedure, and the PSLRA, The Teamsters Local 282 Pension Trust
 25 Fund ("Local 282" or "movant") hereby moves this Court for an order (a) consolidating the
 26 above-captioned actions; (b) appointing movant as the Lead Plaintiff in the action under section
 27 21D(a)(3)(B) of the Exchange Act; and (c) approving his selection of Kirby McInerney, LLP to
 28 serve as Lead Counsel and McKay Chadwell PLLC to serve as Liaison Counsel for the Class in
 the action. This motion is made on the grounds that Local 282 is the most adequate plaintiff as
 defined by the PSLRA. Movant has suffered losses of \$428,237.04, has submitted a sworn
 certification demonstrating movant's desire to serve as a lead plaintiff in this action and
 movant's understanding of the attendant duties and obligations of serving as lead plaintiff on
 behalf of the class. In addition, Local 282, for purposes of this motion, satisfies the requirements
 of Rule 23 of the Federal Rules of Civil Procedure in that its claims are typical of the claims of
 the putative Class, and it will fairly and adequately represent the interests of the Class.

To the best of movant's knowledge, movant has suffered the greatest loss sustained by

**MOTION FOR CONSOLIDATION AND APPOINTMENT
 OF LEAD PLAINTIFF AND LEAD COUNSEL - 2**
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any individual who has filed a complaint or filed an application to serve as Lead Plaintiff in this action and for purposes of this motion, satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, therefore pursuant to the PSLRA movant is the most adequate lead plaintiff.

This motion is supported by the Declaration of Ira M. Press ("Press Decl.") filed herewith, and all prior pleadings and proceedings herein, and such other written or oral argument as may be permitted by the Court. A proposed order regarding the appointment of Lead Plaintiff and approval of Lead and Liaison Counsel accompanies this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

Defendants Dendreon and its officers and directors (collectively "Dendreon") is a biotechnology company focused on targeting cancer and transforming lives through the discovery, development, and commercialization of novel therapeutics that may significantly improve cancer treatment options for patients. The company applies its expertise in antigen identification, engineering and cell processing to produce active cellular immunotherapy (ACI) product candidates designed to stimulate an immune response. Dendreon is headquartered in Seattle and has a manufacturing facility in New Jersey and is in the process of constructing facilities in Georgia and California.

Statements in Press Release, the Company's 8-K Form, the 1Q:11 form, and the 10-Q form contained materially false and misleading information regarding Dendreon's chief product, PROVENGE (an autologous cellular immunotherapy for the treatment of asymptomatic or minimally symptomatic metastatic castrate resistant prostate cancer), and omitted to include material information in violation of the Securities Act, 15 U.S.C. §§ 78j(b) and 78t(a). Specifically, these documents misstated and omitted information about PROVENGE's adoption

1 by the medical community, the price of the PROVENGE compared to its efficacy, the launch of
 2 the product was proceeding as planned, and the company's internal controls and procedures.

3 The instant class action was filed on August 4, 2011 by the Plaintiff Frias represented
 4 jointly by Hagens Berman Sobol Shapiro LLC ("Hagens Berman") and Kahn Swick and Foti
 5 ("Kahn Swick"). On August 4, notices were posted by Hagens Berman on Bloomberg, and on
 6 August 5, notices were published by Hagens Berman and Kahn Swick on Businesswire. See
 7 Press Decl., Exhibit 1.

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II. ARGUMENT

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A. The Related Actions Should Be Consolidated

10 Section 21D(a)(3)(B)(ii) of the Exchange Act addresses the issue of consolidation of
 11 similar actions filed under the PSLRA:

12 If more than one action on behalf of a class asserting substantially the same claim
 13 or claims arising under this title has been filed, and any party has sought to
 14 consolidate those actions for pretrial purposes or for trial, the court shall not make
 15 the determination [of appointment of lead plaintiff under §21D(a)(3)(B)(I)] until
 16 after the decision on the motion to consolidate is rendered.

17 15 U.S.C. §78u-4(a)(3)(B)(ii).

18 Accordingly, a two-step process is applied in determining lead plaintiff and lead counsel
 19 status when consolidation is an issue. First, the Court shall rule on the consolidation issue.
 20 Second, after the cases have been consolidated, the Court rules on the lead plaintiff and lead
 21 Counsel Issues.

22 It is appropriate to consolidate these cases. The three complaints assert claims against the
 23 same defendants for the violations of the same securities laws on behalf of largely overlapping
 24 putative classes of investors.¹

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 28 ¹The slight difference in the class period in one of the actions does not render consolidation inappropriate where, as here, the cases present sufficiently common questions of fact and law, and the differences do not outweigh the interests of judicial economy served by consolidation.

1 **B. Local 282 Should Be Appointed Lead Plaintiff**

2 Local 282 respectfully submits that it should be appointed Lead Plaintiff because it is the
 3 movant “most capable of adequately representing the interests of class members.” 15 U.S.C. §
 4 78u-4(a)(3)(B). The PSLRA establishes a presumption that the “most adequate plaintiff” is the
 5 movant that “has the largest financial interest in the relief sought by the class” and which
 6 “otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.” See 15
 7 U.S.C. §78u-4(a)(3)(B)(iii)(I)(bb); *See also In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002);
 8 *Cunha v. Hansen Natural Corp.*, No. 08 Civ. 01249, 2009 WL 2029797, at *1 (C.D. Cal. July
 9 13, 2009); *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659, 664-65 (C.D. Cal. 2005).

10 **1. Local 282 Believes That It Has The Largest Financial Interest In The
 11 Relief Sought By The Class**

12 Local 282 is presumptively the most adequate plaintiff for the reasons set forth below
 13 and because it believes that it has the largest financial interest in the relief sought by the Class.
 14 As a result of the wrongdoing alleged in the complaint, and the consequential decline in value of
 15 its common stock, Local 282 has suffered approximately \$428,237.04 in losses. *See Tanne*, 226
 16 F.R.D. at 666 (comparing losses of competing lead plaintiff movants). Local 282 purchased a
 17 total of 15,071 Dendreon shares. Local 282 had no sales during the class period. The net funds
 18 expended by Local 282 on Dendreon shares was \$612,281.08. *See* Press Decl., Exhibit 3. Given
 19 the magnitude of its losses, Local 282 believes that it has the largest financial interest of any
 20 proposed Lead Plaintiff.

21 **2. Local 282 Otherwise Satisfies The Requirements of Rule 23**

22 Local 282 should be appointed Lead Plaintiff because it also satisfies the requirements of
 23 Rule 23 of the Federal Rules of Civil Procedure. On a motion to serve as Lead Plaintiff, the
 24 movant need only make “a preliminary showing of typicality and adequacy.” *Ferrari v. Gisch*,

1 225 F.R.D. 599, 606 (C.D. Cal. 2004) (citing *Erikson v. Cornerstone Propane Partners LP*, No.
 2 03-2522, 2003 WL 22232387, at *3 (N.D. Cal. Sept. 15, 2003). See also *In re Cavanaugh*, 306
 3 F.3d at 730; *Tanne*, 226 F.R.D. at 666 (“A wide ranging analysis is not appropriate’ to
 4 determine whether [the movant] has made a *prima facie* showing that he satisfies the
 5 requirements of Rule 23, and ‘should be left for consideration on a motion for class
 6 certification”’) (quoting *Fischler v. AMSouth Bancorporation*., No. 96 civ. 1567, 1997 WL
 7 118429, at *2 (M.D. Fla. Feb. 6, 1997)). Local 282 satisfies both requirements in this case.
 8

9 Local 282’s claims are typical of the claims of other Class members. The typicality
 10 requirement is satisfied when the proposed Lead Plaintiff has (i) suffered the same injuries as
 11 class members; (ii) as a result of the same course of conduct; and (iii) its claims are based on the
 12 same legal issues. *See Armour v. Network Assocs., Inc.*, 171 F. Supp. 2d 1044, 1052 (N.D. Cal.
 13 2001). Local 282’s claims and injuries in this action arise from the same course of misconduct
 14 by defendants as those of other Class members – i.e., the inflated prices paid for the common
 15 stock as a result of false statements and omissions regarding the actual financial prospects of
 16 Dendreon’s PROVENGE. *See Tanne*, 226 F.R.D. at 667. The legal issues are likewise the same;
 17 the case only alleges innocent and/or negligent conduct on the part of Dendreon, the individual
 18 defendants. Local 282 likewise satisfies the adequacy requirement of Rule 23. “Representation
 19 is ‘adequate’ when the representative’s interests are not antagonistic to the interests of absent
 20 class members, it is unlikely that the action is collusive, and counsel for the class is qualified and
 21 competent.” *Ruland v. InfoSonics Corp.*, No. 06-cv-1231, 2006 WL 3746716, at *6 (S.D. Cal.
 22 Oct. 23, 2006). Local 282 is adequate to represent the Class because its interests are perfectly
 23 aligned with those of the other Class members and are not antagonistic in any way. *See Tanne*,
 24 226 F.R.D. at 667. As an investor who purchased common stock at inflated prices and suffered
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1 substantial losses when the truth was revealed, Local 282 has an identity of interest with its
 2 fellow Class members. There are no facts suggesting that any actual or potential conflict of
 3 interest or other antagonism exists between Local 282 and other Class members.

4 As an institutional investor serving pensioners with approximately \$1 billion, Local 282
 5 is the type of investor Congress hoped would lead class actions when it enacted the PSLRA. *See,*
 6 *e.g., In re SiRF Tech. Holdings, Inc. Sec. Litig.*, No. C 08-0856, 2008 WL 2220601, at *3 (N.D.
 7 Cal. May 27, 2008) (“by enacting the PSLRA, Congress sought to increase the participation of
 8 institutional investors in securities class actions”).

9 Local 282’s very significant interest in the outcome of the case ensures vigorous
 10 advocacy. *See, e.g., Ruland*, 2006 WL 3746716, at *6 (finding adequate a proposed Lead
 11 Plaintiff that “has [adequate] incentive to prosecute this action vigorously and states that he is
 12 willing to serve as a representative on behalf of the class”). Local 282 has submitted a
 13 Certification affirming its commitment to the steps necessary for effective prosecution of this
 14 complex Class action. *See* Press Decl., Exhibit 2. Through that Certification, Local 282 accepts
 15 the fiduciary obligations it will assume if appointed Lead Plaintiff in this action. *See Tanne*, 226
 16 F.R.D. at 668, 671.

17 **C. The Court Should Approve Lead Plaintiff’s Selection of Kirby McInerney
 18 LLP as Lead Counsel**

19 The PSLRA vests authority in the Lead Plaintiff to select and retain counsel, subject only
 20 to approval of the Court. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v). Thus, the Court should not disturb
 21 the Lead Plaintiff’s choice of counsel unless necessary to “adequately protect the interest of the
 22 class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). *See also In re Cavanaugh*, 306 F.3d at 733. In
 23 the present case, movant has retained Kirby McInerney LLP to pursue this litigation on its
 24 behalf, and will seek to use the firm as plaintiff’s Lead Counsel, and the law firm of McKay
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1 Chadwell PLLC as Liaison Counsel, in the event it is appointed Lead Plaintiff. Kirby
2 McInerney LLP possesses extensive experience in the area of securities litigation and has
3 successfully prosecuted numerous securities class actions on behalf of injured investors, as
4 reflected by the firm resumé attached to the Press Decl. as Exhibit 4. Thus, the Court may be
5 assured that, by granting movant's motion, the Class will receive high quality legal
6 representation.
7

8 **III. CONCLUSION**

9 For all of the foregoing reasons, Local 282 respectfully requests that the Court: (i)
10 consolidate the above-captioned cases pursuant to Fed. R. Civ. P. 42(a); (ii) appoint Local 282 as
11 Lead Plaintiff pursuant to the PSLRA; (iii) approve its selection of Kirby McInerney LLP as
12 Lead Counsel and McKay Chadwell PLLC as Liaison Counsel; (iv) and (v) grant such other and
13 further relief as the Court may deem just and proper.

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15 Dated: October 3, 2011

16 /s/ Michael D. McKay
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